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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

KISSINGER N. SIBANDA

Plaintiff,

v.

DAVID ELLISON, DAVID BENIOFF,
BILLY RAY, DARREN LEMKE,
SKYDANCE PRODUCTIONS, LLC, a
California Limited Company; and GEMINI
PICTURES, LLC, a California Limited
Liability Company, ASHLEE LIN, FOSUN
PICTURES INC.

Defendants.

Case No: 1:23-CV-05752-JMF

LETTER:

Request for reconsideration: Preliminary

Injunction

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Request for reconsideration: Preliminary Injunction

- 1 -

Plaintiff's Letter:

:

Hon. Judge Furman,

This letter addresses the Order denying plaintiff a Preliminary Injunction because he fails to show irreparable harm and should be taken as a request for reconsideration or a request at the minimum for the court to follow its own rules and hold a telephone conference per Rule 5.2.a. Plaintiff does not fail to show irreparable harm as discussed here:

Parties were supposed to call in and address this motion for preliminary injunction and plaintiff would have offered pointed answers to this concern, which plaintiff does acknowledge is a valid concern by the court - this is how a preliminary injunction works, quick argument and resolution of an equitable solution by hearing both sides. *See in general, New York Times Co. v. United States*, 403 U.S. 713 (1971)., on how the judge handled those requests for a temporary order and the hearings in this District.

As the request for Preliminary Injunction shows, Dkt. N. 120, there is a possibility that defendants could transfer their assets to defeat the ends of justice and plaintiff prevailing on the merits – this is irreparable harm to plaintiff in the foreseeable future and is fact based given defendants past financial condition¹, regardless that there is “a motion to dismiss pending.” This is the stated irreparable harm; and the memorandum of law addressing the request is clear on this. Dkt. No. 121. Preliminary Injunction MOL at 13-14.

¹ Before partnering with Chinese Fosun Pictures Inc.

1 Plaintiff is disappointed that the court did not afford plaintiff the courtesy to be heard via
2 telephone conference per its Rule 5.2.a and asks to be heard telephonically on this issue – failure
3 to show irreparable harm. It is noted that the bench has reminded plaintiff on several times that
4 there are pending “sanctions and motions to dismiss against him”; this is defendant’s advocacy
5 on the matter on the docket – plaintiff as well should be allowed to advocate in their matter and a
6 preliminary injunction is in line with plaintiff’s advocacy, the facts and merits of this case, as he
7 sees them. The preliminary Injunction should be taken as seriously as the sanctions and motions
8 to dismiss, which were not dismissed summarily but were fully briefed and submitted. This
9 preliminary injunction should be fully heard.
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13 Furthermore, Defendants would lose nothing to set up a constructive trust between now
14 and the conclusion of their pending motions as an equitable remedy to guide against the concerns
15 cited in plaintiff’s Preliminary Injunction MOL at 13-14. Each pleading before the court should
16 be decided on its own merits, it need not cite to pending sanctions or motions to dismiss as the
17 reason; because that is the very reason why sanctions motions are filed, to chill advocacy.
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20 It is fair that Your Honor, would like to consider the pending motions before giving the
21 preliminary injunction its due focus, but the suggestion that loss of monetary fund’s from
22 “Gemini man,” in the event of bankruptcy or illegal liquidation, is not irreparable harm to
23 plaintiff is not an accurate application of *Salinger* and argument should be heard on this
24 contention. Id.
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1 The court is respectfully asked to hold a telephone conference pursuant to Your Honor's
2 Rule 5.2.a to address further argument regarding irreparable harm before making a final decision
3 on the matter, with both parties present via telephone. Perhaps Your Honor will understand better
4 plaintiff's request.
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8 Respectfully submitted,

9 Dated: 10/31/2023

LIVINGSTON, NJ

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11 By: /s/Kissinger N. Sibanda

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